



County of Albemarle
COMMUNITY DEVELOPMENT DEPARTMENT

401 McIntire Road, North Wing
Charlottesville, VA 22902-4579
Telephone: 434-296-5832
WWW.ALBEMARLE.ORG

**ALBEMARLE COUNTY BOARD OF ZONING APPEALS
AGENDA
TUESDAY, JUNE 3, 2025 at 2:00 P.M
LANE AUDITORIUM**

1. Call to Order
2. Establish a Quorum
3. Public Hearings:
 - There are no public hearings scheduled
4. Approval of Minutes
 - A. [February 4, 2025](#)
5. Old Business
 - A. [Review and Re-Adopt Rules of Procedure](#)
6. New Business
 - A. Budget Discussion
 - B. Upcoming Meeting Information
7. Adjournment

Opportunities for the public to access and participate in the meeting will be posted at <https://www.albemarle.org/community/quick-links/county-calendar>. Participation will include the opportunity to comment on those matters for which comments from the public will be received.

BOARD OF ZONING APPEALS IN-PERSON MEETING GUIDELINES

Thank you for attending the Board of Zoning Appeals (BZA) meeting. The following information is provided to help ensure the meeting proceeds as efficiently and effectively as possible. As a courtesy to others, please turn off all cell phones during the meeting.

General Information:

This meeting is recorded and later transcribed into minutes approved at a later meeting date.

Each item set for public hearing will begin with a presentation of the staff report. Next, the applicant or appellant for that item will be invited to speak. During the course of the process, the Chair will open the public hearing to comments from the public. At the end of these proceedings the Chair will announce that the public hearing is closed. Once the public hearing is closed, no further public comments will be allowed unless the Board asks for additional information from the applicant or appellant.

The BZA reserves the right to digress from these guidelines in any particular case.

Instructions To Members of the Public:

Public comment is welcome during Public Hearings. A sign-up sheet will be available in Lane Auditorium prior to the meeting for anyone who would like to comment on a scheduled public hearing. If you wish to comment on those matters for which comments from the public will be received, please list your name on the appropriate sign-up sheet. When your name is announced for comment, please come to the microphone and state your name for the record. For uncommon spellings, please spell your name for the recording clerk. If you are with a group of people, you may want to have a spokesperson present your position to the Board.

In order to give all speakers equal treatment and courtesy, the Board requests that speakers adhere to the following guidelines:

- *Come forward to the speaker's podium and state your name;*
- *Address comments directly to the Board as a whole - open public debate is prohibited;*
- *State your position and give facts and other data to back it up;*
- *There is a **3-minute time limit for each speaker** during public comment; minutes may not be shared or ceded to other speakers;*
- *Each speaker will have one opportunity to address the BZA;*
- ***Give written statements and other supporting material to the Recording Clerk** (written comments are also welcome if you do not wish to speak).*

Additional Guidelines for Applicants and Appellants addressing the Board:

- *Please contact staff in Community Development ahead of the meeting to make any necessary arrangements for your presentation. **The Recording Clerk will also need copies of any handouts given to the BZA members for the official record of the meeting.***
- *Be clear in stating your position and do not repeat information that has been previously submitted to the Board.*
- *Stay on topic by addressing the questions in the application or by responding directly to staff's determination(s). Focus on presenting facts and data that support your position.*
- *Keep in mind there is a **15-minute time limit for presentations and a 5-minute time limit for rebuttal comments**. The Board will ask any necessary follow-up questions to clarify points made during the presentation.*
- *Understand that the Board of Zoning Appeals cannot change County ordinances.*

The BZA reserves the right to place additional time limitations on speakers, as necessary.

ALBEMARLE COUNTY BOARD OF ZONING APPEALS
REGULAR MEETING
TUESDAY, FEBRUARY 4, 2025—2:00 P.M.

Board Members: Edward (Bo) Carrington
Marcia Joseph
John Shepherd
Kurt Burkhart
Ronald Rosenberg

Staff Members: Bart Svoboda, Zoning Administrator
Francis MacCall, Deputy Zoning Administrator
Marsha Alley, BZA Clerk and Recorder

County Attorney: Andy Herrick, County Attorney

BZA Attorney: James Bowling, IV

1. Call to Order

The meeting was called to order at 2:00 p.m. by Deputy Zoning Administrator Francis MacCall.

2. Establish a Quorum

Mr. MacCall established a quorum.

The following members were present: Kurt Burkhart, John Shepherd, Marcia Joseph, Ronald Rosenberg, and Edward Carrington.

The following members were absent: None.

Also present were Bart Svoboda, James Bowling, Andy Herrick, Lisa Green, Francis MacCall, and Marsha Alley.

3. Annual Organizational Meeting

A. Election of Officers

Ms. Joseph nominated Mr. Carrington as Chair, Mr. Burkhart as Vice Chair, and Mr. Shepherd as Secretary.

Mr. MacCall closed the floor to nominations.

MOTION: Ms. Joseph motioned to re-elect Mr. Carrington as Chair, Mr. Burkhart as Vice Chair, and Mr. Shepherd as Secretary. Mr. Rosenberg seconded the motion, which passed unanimously (5-0).

Mr. Carrington requested to amend the agenda to consider the public hearing, Item 4(A), next because Mr. Rosenberg had to leave early.

MOTION: Mr. Rosenberg motioned to amend the agenda to consider Item 4(A) before Item 3(B). Mr. Shepherd seconded the motion, which passed unanimously (5-0).

1 **4. Public Hearings**

2
3 **A. VA2024-00003 654 Clarks Tract Lot Size Reduction {Sign #15}**

4 Francis MacCall, Deputy Zoning Administrator, presented the staff report. He stated that the applicant
5 was requesting a variance from the rural area minimum lot size, reducing the lot from 7.01 acres to 1.3867
6 acres, resulting in a variance of 0.6133 acres from the 2.00-acre minimum. He noted that the remainder
7 would be added to the adjacent lot under the same ownership. He explained that all criteria had to be met
8 in order to grant a variance. He stated that, as outlined in the staff report, the request did not meet all of
9 the criteria, and it was staff's recommendation to deny the request for a variance.

10
11 The Chair provided the applicant with the opportunity to make a presentation.

12
13 Andrew Lynn, applicant and property owner, addressed the Board. He explained that his motivation for
14 the request was to preserve the viewshed and horse grazing lands on the property. He noted that there
15 were several nearby lots that were under the 2-acre minimum.

16
17 Mr. Shepherd suggested that the applicant could consider an easement to accomplish the preservation of
18 the viewshed and grazing lands.

19
20 Mr. Carrington asked if the applicant had considered increasing the subject parcel's frontage along the
21 road in order to meet the 2-acre minimum.

22
23 Mr. Lynn stated that staff had informed him he could not increase the frontage.

24
25 The Chair opened the public hearing for comments from the public. There was no one wishing to speak,
26 so the Chair closed the public hearing and opened the floor for rebuttal.

27
28 The Chair provided the County five minutes for rebuttal.

29
30 Andy Herrick, County Attorney, explained that the Board was being asked to determine whether the 2-
31 acre minimum unreasonably restricted the utilization of the parcel. He noted that the applicant could seek
32 alternative methods to achieve his stated goals, such as through a scenic easement or a zoning
33 amendment. He said that because the applicant could still achieve a reasonable utilization of the property
34 with the 2-acre lot minimum, the Board should deny the variance request.

35
36 The Chair provided the applicant five minutes for rebuttal.

37
38 Mr. Lynn, applicant, deferred his time for rebuttal.

39
40 The Chair opened the matter to the Board for deliberation.

41
42 Ms. Joseph stated there were other means of preserving the viewshed on the property, and she could not
43 support the variance request.

44
45 Mr. Shepherd stated that he did not support the request. He said that the 2-acre minimum did not impose
46 an unreasonable restriction, and a hardship was not demonstrated.

47
48 Mr. Burkhart said he supported the staff recommendation. He said that denying the variance did not
49 unreasonably restrict the use of the property, and granting a variance would not alleviate a hardship.

1 Mr. Rosenberg said that the 2-acre minimum did not impose an unreasonable hardship. He supported the
2 staff recommendation.

3
4 Mr. Carrington said he did not find that the request met the criteria for a variance.
5

6 **MOTION:** Mr. Shepherd moved to deny the variance application VA2024-00003 654 Clarks Tract Lot
7 for the reasons stated in the staff report and in the discussion. Mr. Burkhart seconded the motion, which
8 passed unanimously (5-0).
9

10 **3. Annual Organizational Meeting (continued)**

11 **B. Review and Re-Adopt Rules of Procedures**

12 Mr. Carrington explained that if there were any proposed amendments to be made, they would be
13 formally adopted at the next meeting.
14

15
16 Mr. Burkhart said he had four proposed amendments. Regarding Section 1(A), he proposed amending
17 "the Chair may administer oaths" to "the Chair shall administer oaths". He said that speakers before the
18 Board should be required to take an oath that their statements are true.
19

20 Mr. Carrington expressed concerns that the amended language would require the Chair to take an oath
21 from everyone wishing to speak before the Board and compel all witnesses to attend the hearing. He said
22 he agreed that they should be more consistent with taking oaths, but it should not be mandatory.
23

24 Ms. Joseph noted that applications typically required an assertion that the information was accurate, true,
25 and correct.
26

27 Mr. Rosenberg argued against the proposal and suggested that they should maintain the current language
28 to be consistent with the language in the state code.
29

30 Based on the discussion, Mr. Burkhart withdrew the proposed amendment.
31

32 Mr. Burkhart proposed amending Section 1(D), adding language to the end of the minutes that would
33 direct readers to a url link to the meeting recording posted on YouTube. He said that it was important that
34 the public be able to easily access the meeting recordings, and multiple access points would be helpful.
35

36 Mr. Carrington said that he agreed with the idea of adding the link reference to the minutes but did not
37 find it necessary to amend the rules of procedure. After much discussion by the Board, he said that they
38 could request staff to include the proposed link reference in the minutes.
39

40 Based on the discussion, Mr. Burkhart withdrew the proposed amendment.
41

42 Mr. Burkhart proposed amending Section 3(B), adding an item related to ex parte communications. He
43 explained that the Chair would be required to ask each board member about any ex parte communication
44 with staff, the Board of Supervisors, or the appellant related to any matter before the BZA.
45

46 Mr. Rosenberg suggested that best practice would be to avoid all ex parte communications regarding BZA
47 matters. He expressed concerns regarding the appearance of impropriety and added that reporting on ex
48 parte communications could slow down the meeting.
49

50 There was discussion regarding ex parte communications.

1
2 Mr. Bowling advised that the proposed amendment could create due process issues with regards to
3 notifying the appellant about communications prior to the meeting. He said that if any board member did
4 have communications with staff, they should notify staff and the other board members so that the
5 appellant/applicant can be informed of the contact before the meeting.
6

7 Mr. Rosenberg left the meeting at 3:20 p.m.
8

9 Mr. Burkhardt withdrew his amendment regarding the ex parte communication because he was pleased in
10 discussing the existing regulations.
11

12 Mr. Burkhardt proposed amending Section 5(D) to add the following provision from Code of Virginia §
13 15.2-2311(D): “In any appeal taken pursuant to this section, if the board’s attempt to reach a decision
14 results in a tie vote, the matter may be carried over until the next scheduled meeting at the request of the
15 person filing the appeal.” He proposed this additional language be included in the Board of Zoning
16 Appeals In-Person Meeting Guidelines. He said that on June 6, 2023, the appellant was not informed that
17 the matter could be carried over to the next meeting because of a tie vote. He said that he wanted to ensure
18 appellants received this information.
19

20 Mr. Shepherd and Ms. Joseph indicated their agreement.
21

22 Mr. Bowling stated that the proposed language mirrors the statutory language.
23

24 There was discussion regarding where in the rules of procedure the language should be included.
25

26 Mr. Burkhardt proposed that the language also be included in the Board of Zoning Appeals In-Person
27 Meeting Guidelines.
28

29 Mr. Bowling stated that the guidelines have nothing to do with tie votes.
30

31 Mr. Burkhardt rescinded that portion of the proposal.
32

33 There was discussion regarding advising an appellant about the right to request an appeal. Mr. Bowling
34 advised the BZA to reference their Rules of Procedures.
35

36 Mr. Svoboda noted that the statute only applied to appeals, and it did not apply to other decisions of the
37 BZA.
38

39 There was discussion regarding the possible procedural requirements that may be involved in an appeal
40 resulting in a tie vote being carried over to the next scheduled meeting.
41

42 The Chair noted there was consensus to add the amended language to Section 5(A)(2) and 5(D).
43

44 The Chair stated that the Rules of Procedure would be voted on for adoption at the next meeting.
45

46 **C. Review and Adopt 2025 Meeting Schedule**

47 Mr. Carrington noted that he had conflicts for the April 1st and August 5th scheduled meetings. He said
48 that he may be able to participate in the meetings remotely, so he did not want to reschedule or cancel
49 them.
50

MOTION: Mr. Burkhart moved to adopt the 2025 Meeting Schedule. Ms. Joseph seconded the motion, which passed unanimously (4-0). (Mr. Rosenberg was absent)

5. Approval of Minutes

A. December 3, 2024

Mr. Shepherd requested that Mr. DeLoria's name be added to the list of staff mentioned as also present.

MOTION: Mr. Shepherd moved to approve the minutes as amended. Mr. Burkhart seconded the motion, which passed unanimously (3-0). (Ms. Joseph abstained; Mr. Rosenberg was absent)

6. Old Business

Ms. Joseph reported that she had sent an email indicating that she would not seek reappointment, but the Board of Supervisors had not taken action on the letter requesting an alternate member. She said that she would be seeking reappointment.

Mr. Svoboda said they may have already started the process with the Circuit Court for a replacement. He said that they would look into the replacement process.

Mr. Burkhart asked for an update on alternate appointments and the budget process to include the funding for the alternate position. He suggested that the BZA Chair address the Board of Supervisors during public comment to address the need for alternate appointments.

Mr. Carrington stated that a letter was sent last year asking if the original letter requesting the alternate position had been received and that confirmation of receipt was provided at that time. He added that it may be that not all board members received it or recall receiving it. He said he was willing to address the Board of Supervisors on behalf of the BZA if that is the preference

Ms. Joseph suggested that she and Mr. Burkhart address the Board since they were the members who performed the research and spoke with other localities regarding this topic.

Mr. Carrington agreed and offered to assist if needed.

7. New Business

A. Budget Discussion

Mr. Svoboda stated that the Board of Supervisors was beginning the budget process, and he would provide a schedule. He said that departments had been instructed by the Finance Department to not submit budget increases. He said that the legal counsel compensation and alternate cost requests had been submitted, but he could not provide any more information about the status of the requests. He said that staff would review the current budget for any available funds that could be carried over to be used for the requests.

B. Upcoming Meeting Information

Mr. MacCall said that appeals had been filed but have not been scheduled for a hearing at this time. He explained that the appellants may consider withdrawing the appeals. He added that currently there are no other applications so the March meeting may be cancelled.

Ms. Joseph asked for an update on the gun appeal.

1 Mr. Herrick replied that the case was pending before the court, but the appellant had not requested a court
2 date.

3
4 Mr. Burkhart asked for an update on the Kostelac hearing from December.

5
6 Mr. Herrick stated that Mr. Kostelac had filed an appeal with the Circuit Court.

7
8 **8. Adjournment**

9
10 **MOTION:** Mr. Shepherd moved to adjourn the meeting. Ms. Joseph seconded the motion, which passed
11 unanimously (4-0). (Mr. Rosenberg was absent)

12
13 The meeting adjourned at 4:04 p.m.

14
15 (Recorded by Marsha Alley and transcribed by Golden Transcription Services)

16
17 Respectfully Submitted,

18
19
20
21
22 _____
23 John Shepherd, Secretary Board of Zoning Appeals

24 *This meeting may be viewed at https://www.youtube.com/watch?v=8o_hXWufAx0

ALBEMARLE COUNTY BOARD OF ZONING APPEALS RULES OF PROCEDURE

The Albemarle County Board of Zoning Appeals, under the authority of Virginia Code § 15.2-2308 and Albemarle County Code § 18-34.1, establishes the following rules of procedure:

1. Officers

- A. Chair. At its annual meeting, the Board of Zoning Appeals (“BZA”) shall elect a Chair who, if present, shall preside at the meeting and at all other meetings during the year for which elected. On any application or appeal, the Chair may administer oaths and compel the attendance of witnesses.
- B. Vice-Chair. At its annual meeting, the BZA shall elect a Vice-Chair, who, if present, shall preside at meetings in the absence of the Chair and shall discharge the duties of the Chair during the Chair’s absence or disability.
- C. Secretary. At its annual meeting, the BZA shall elect a Secretary. The Secretary may be either a member of the BZA or another person. The duties of the Secretary shall include keeping and maintaining custody of the records of the BZA, drafting and signing all correspondence necessary for the execution of the duties and functions of the BZA, and such other duties as these rules may provide and the BZA may, from time to time, assign.
- D. Recording Secretary. The Zoning Administrator (or designee) may serve the BZA as its Recording Secretary. The duties of the Recording Secretary shall include keeping the minutes of the BZA’s meetings and such other duties as these rules may provide and the BZA may, from time to time, assign.
- E. Other Offices. At any of its meetings, the BZA may create and fill any other offices as it deems necessary.
- F. Term of Office. The Chair and Vice-Chair shall be elected for one-year terms, and until their respective successors take office. Either or both officers may be re-elected for one or more additional terms.
- G. Vacancies in Office. Vacancies in office shall be filled as soon as practicable using the election procedures provided herein.
- H. Absence of Chair and Vice-Chair. If the Chair and Vice-Chair are absent from any meeting, a present member shall be chosen to act as Chair.

2. Meetings

A. Annual Meeting. The first meeting of each year shall be known as the annual meeting. At the annual meeting, the BZA shall establish the day, time, and place for regular meetings of the BZA for that year, and shall elect the Chair, the Vice-Chair and the Secretary.

B. Regular Meetings. The BZA shall meet in regular session at the time and place and on the day or days established for regular meetings. The BZA may subsequently establish a different day, time, or place to conduct its regular meetings by passing a resolution to that effect.

If the Chair, or the Vice-Chair if the Chair is unable to act, finds and declares that weather or other conditions are such that it is hazardous for BZA members to attend a regular meeting, the meeting shall be continued to the next regular meeting date. This finding shall be communicated to the members of the BZA and to the press as promptly as practicable.

Without further public notice, a regular meeting may be adjourned from day to day or from time to time or from place to place, not beyond the time fixed for the next regular meeting, until the business of the BZA is complete.

C. Special Meetings. The BZA may hold special meetings as it deems necessary at such times and places as it deems convenient. A special meeting may be adjourned from time to time as the BZA finds necessary and convenient.

A special meeting shall be held when called by the Chair or requested by two or more members of the BZA. The call or request shall be made to the Recording Secretary and shall specify the matters to be considered at the meeting. Upon receipt of the call or request, the Recording Secretary, after consultation with the Chair, shall immediately notify each member of the BZA and the County Attorney's Office. The notice shall be in writing and shall be mailed or delivered to all BZA members or to their places of residence or business or by electronic communication at least five (5) days prior to the special meeting. The notice shall state the time and place of the special meeting and shall specify the matters to be considered. No matter not specified in the notice shall be considered at the meeting unless a quorum of members is present. The notice may be waived if the time of the special meeting was fixed at a regular meeting, if a quorum of members is present at the special meeting, or if all members sign a waiver for the notice.

Whenever state law requires public notice of a special meeting of the BZA, the Recording Secretary shall provide such notice in accordance with *Virginia Code* §15.2-2204.

3. **Order of Business**

- A. *Agenda Established by Secretary.* The agenda for each regular meeting shall be established by the Secretary in consultation with the Chair.
- B. *Organization of the Agenda.* The agenda of each regular meeting shall be organized in substantially the following order, subject to change at the request of the Chair and with the consensus of the other members of the BZA:
- (1) Call to order.
 - (2) Establish quorum.
 - (3) Matters deferred from previous meetings.
 - (4) Scheduled matters: hearings on special use permits, variances and appeals.
 - (5) Work sessions.
 - (6) Review and approval of minutes of previous meetings.
 - (7) Old business.
 - (8) New business.
 - (9) Adjournment.
- C. *Time Limits for Applicants, Appellants and Other Speakers.* The BZA shall offer an equal amount of time in a hearing to the applicant/appellant and County staff. The applicant/appellant and County staff shall each be allowed a total of fifteen (15) minutes to present its respective case at the outset of the hearing, and five (5) additional minutes to present rebuttal or closing remarks at the close of the hearing. Each person other than parties to the case or their legal representative(s) shall be allowed one appearance not to exceed three (3) minutes. A speaker may not reserve any initial speaking time for rebuttal or transfer any time to another speaker. The time limits set forth herein shall not include any time during which the applicant or other speaker is responding to questions asked by the BZA. The Recording Secretary shall act as the timekeeper. The BZA Chair may set alternate time limits to those listed herein at the Chair's discretion, provided that they are identified at the BZA meeting prior to the meeting at which these new limits would be used.
- D. *Deferrals.* The BZA may defer any matter at the request of a member of the BZA, the County staff, or the applicant or appellant. The request may be made either

orally at the meeting, or in writing, and may be made at any time prior to the vote on the matter. The person making the request shall state the reasons therefor.

In considering a request for a deferral of a hearing of an appeal or an application for a variance pertaining to a zoning violation, the BZA shall consider the reasons for the deferral if the request is submitted by the appellant or applicant, the recommendation of staff, and the members of the BZA. In making its decision to grant or deny a request, the BZA shall consider the following factors: (1) whether the deferral would promote fairness in the process; (2) whether the deferral would be solely for the convenience or personal benefit of the appellant or applicant; (3) whether the deferral would delay the enforcement or abatement of a violation that is adversely affecting an abutting property, a neighbor, the neighborhood or the public; (4) whether the deferral would allow the appellant or applicant to resolve the underlying issues so that BZA action might be unnecessary; and (5) whether the deferral would allow the BZA to make its decision within ninety days of the filing of the application or appeal, in conformance with *Virginia Code* § 15.2-2312.

A motion to defer shall either specify the date to which the matter is deferred or defer the matter indefinitely. If the motion to defer pertains to a matter for which a noticed public hearing is required and the motion is to defer the matter to a specific date, the Chair shall either close the public hearing or, if the public hearing was not opened, open and then close the public hearing, before the BZA votes on the motion.

4. Quorum

A majority of the members of the BZA shall constitute a quorum for any meeting of the BZA. A majority of the members of the BZA present at the time and place established for any regular or special meeting shall constitute a quorum for the purpose of adjourning the meeting from day to day or from time to time. A meeting may not be adjourned to a date and time beyond the date fixed for the next regular meeting.

If, during a meeting, less than a majority of the members of the BZA remains present, no action can be taken except to adjourn the meeting. If, prior to adjournment, a quorum is again established, the meeting shall continue.

If disqualifications under the State and Local Government Conflict of Interests Act (*Virginia Code* § 2.2-3100 *et seq.*) leave less than a quorum, the remaining member or members of the BZA shall have authority to act for the BZA by a unanimous vote.

5. Voting Procedures

- A. Approval of Motion. Except as otherwise provided in subparagraphs (1) and (2) and in paragraph (H), each decision of the BZA shall be made by approval of a majority of the members present and voting on a motion properly made by a member and properly seconded by any other member. Any motion that is not seconded shall not be further considered.
1. Variances, Special Use Permits and Other Matters. At least three (3) affirmative votes shall be required to grant a variance, to grant a special use permit, or to decide in favor of an applicant on any other matter upon which the BZA is required to act upon under the Zoning Ordinance.
 2. Appeals. At least three (3) affirmative votes shall be required to reverse any appeal from an order, requirement, decision or determination of an administrative officer. Pursuant to *Virginia Code § 15.2-2311(D)*, if the board's attempt to reach a decision results in a tie vote, the matter may be carried over until the next scheduled meeting at the request of the person filing the appeal. (Amended 2/4/25)
- B. Time for Vote. Any matter before the BZA requiring a public hearing shall not be decided by the BZA until the public hearing has been held. The BZA may, however, in its discretion, defer the holding of a public hearing or consideration of such matter, in conformance with paragraph 3(D) above.
- C. Manner of Vote. The vote on a motion pertaining to any variance, special use permit, appeal, or application for interpretation of the district map shall be by roll call vote. Any other matter may be either by roll call vote or voice vote, in the discretion of the Chair; provided that a roll call vote on such a motion shall be required if requested by a member of the BZA. For each roll call vote, the Recording Secretary shall record the name of each member voting and how the member voted on the motion. For each voice vote, the Recording Secretary shall record the result of the vote.
- D. Tie Vote. A tie vote shall defeat the motion voted upon. In any appeal taken pursuant to *Virginia Code § 15.2-2311*, if the board's attempt to reach a decision results in a tie vote, the matter may be carried over until the next scheduled meeting at the request of the person filing the appeal. (Amended 2/4/25)
- E. Effect of Defeat of Motion to Deny. The defeat of a motion to deny a matter shall not be deemed to be approval of the matter. In such a case, the Chair shall call for another motion.
- F. Abstention. Any member(s) abstaining from voting on any motion shall state their abstention(s). The abstention(s) shall be announced by the Chair and recorded by the Recording Secretary.

G. Motion to Amend. A motion to amend a motion before the BZA shall be discussed and voted by the BZA before any vote is taken on the original motion unless the motion to amend is accepted by both the members making and seconding the original motion. If the motion to amend is approved, the amended motion is then before the BZA for its consideration. If the motion to amend is not approved, the original motion is again before the BZA for its consideration.

H. Previous Question. The discussion of any motion may be terminated by any member moving the “previous question.” Upon a proper second, the Chair shall call for a vote on the motion of the previous question. If approved by a two-thirds majority of those voting, the Chair shall immediately call for a vote on the original motion under consideration. A motion of the previous question shall not be subject to debate and shall take precedence over any other matter.

I. Motion to Reconsider. Any decision made by the BZA may be reconsidered if a motion to reconsider is made at the same meeting or an adjourned meeting held on the same day at which the matter was decided. The motion to reconsider may be made by any member of the BZA. Upon a proper second, the motion may be discussed and voted. The effect of the motion to reconsider, if approved, shall be to place the matter for discussion in the exact position it occupied before it was voted upon.

J. Motion for Rehearing. Any decision made by the BZA may be reheard upon the granting of a motion for rehearing approved by at least three affirmative votes. The motion may be made only after consideration of a written application by the person requesting rehearing, which shall be filed within thirty (30) days after the date of the BZA’s original final decision. The BZA may grant the motion if it finds that the decision has not already been appealed to the Circuit Court and: (1) new evidence can be presented that, in the opinion of the BZA, is relevant and material to the decision but could not have been presented at the original hearing; or (2) in the opinion of the BZA, one or more relevant and material conditions or situations have changed so as to bear on the BZA’s original decision. If the BZA grants the motion, it shall set the date for rehearing. Notice of the rehearing shall be provided as otherwise required for the matter being reheard.

6. Final Decision

A. Date of final decision. For the purpose of calculating the time in which an aggrieved party may submit a petition for writ of certiorari in Circuit Court requesting the court to review the decision of the BZA, the date of the BZA’s final decision shall be the date on which the BZA took its final vote on the merits of the matter.

B. Deferral of final decision. If the BZA elects to defer its final decision, nothing in this rule prevents the BZA from obtaining a consensus of its members on the

matter to be decided and requesting one or more of the parties to prepare a proposed written decision to be considered when a final vote is taken.

- C. Effect if written decision adopted after final decision. The date of the BZA's final decision shall not be extended if the BZA later adopts a written decision.

7. **Remote Participation Policy**

A. Applicability of Policy.

1. Purposes. Pursuant to *Virginia Code* § 2.2-3708.3, the following policy:
 - a. describes the circumstances under which remote participation will be allowed and the process the BZA will use for making requests to use remote participation, approving or denying such requests, and creating a record of such requests; and
 - b. fixes the number of times remote participation for personal matters can be used per calendar year, not to exceed the limitations set forth in *Virginia Code* § 2.2-3708.3(B)(4).
2. Application. This policy will be applied strictly and uniformly, without exception, to the entire membership and without regard to the identity of the member(s) requesting remote participation or the matters that will be considered or voted on at the meeting.

B. Non-Emergency Individual Participation. Except as provided elsewhere in this policy, individual members may use remote participation instead of attending a public meeting in person only pursuant to and in compliance with the following rules:

1. Grounds for Remote Participation; Advance Notice of the Chair. Individual members may use remote participation instead of attending a public meeting in person if, in advance of the public meeting, the member notifies the Chair that:
 - a. Personal Medical Condition. The member has a temporary or permanent disability or other medical condition that prevents the member's physical attendance;
 - b. Family Member's Medical Condition. A medical condition of a member of the member's family requires the member to provide care that prevents the member's physical attendance;

- c. *Distant Meeting Location.* The member's principal residence is more than 60 miles from the meeting location identified in the required notice for such meeting; or
 - d. *Identified Personal Matter; Limitation on Use.* The member is unable to attend the meeting due to a personal matter (such as a family event or business commitment) and identifies with specificity the nature of the personal matter. However, the member may not use remote participation due to personal matters more than two meetings per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater.
 - 2. *Minutes.* If participation by a member through electronic communication means is approved pursuant to this Rule, the BZA shall record in its minutes the remote location from which the member participated; however, the remote location need not be open to the public and may be identified in the minutes by a general description.
 - a. *Medical Condition.* If participation is approved pursuant to Rules 7(B)(1)(a) or 7(B)(1)(b), the BZA shall also include in its minutes the fact that the member participated through electronic communication means due to a (i) temporary or permanent disability or other medical condition that prevented the member's physical attendance or (ii) family member's medical condition that required the member to provide care for such family member, thereby preventing the member's physical attendance.
 - b. *Distant Meeting Location.* If participation is approved pursuant to Rule 7(B)(1)(c), the BZA shall also include in its minutes the fact that the member participated through electronic communication means due to the distance between the member's principal residence and the meeting location.
 - c. *Identified Personal Matter.* If participation is approved pursuant to Rule 7(B)(1)(d), the BZA shall also include in its minutes the specific nature of the personal matter cited by the member.
 - d. *Disapproval.* If a member's participation from a remote location pursuant to Rule 7(B) is disapproved because such participation would violate this policy, such disapproval shall be recorded in the minutes with specificity.
 - 3. *When Chair Requests to Participate Electronically.* In the event the Chair seeks to participate through electronic communication means from a

remote location, the Chair must notify the Vice-Chair or other presiding officer and should notify the Secretary on or before the day of the meeting.

C. During a Declared Emergency or When a Continuity of Government Ordinance is in Effect. The BZA may meet by electronic communication means without a quorum of the BZA physically assembled at one location when a state of emergency is declared pursuant to *Virginia Code* § 44-146.17 or a local emergency is declared pursuant to *Virginia Code* § 44-246.21, subject to the provisions and requirements of *Virginia Code* § 2.2-3708.2. The BZA also may meet by electronic communication means when an ordinance adopted pursuant to *Virginia Code* § 15.2-1413 to ensure the continuity of County government is in effect.

8. Amendment of Rules of Procedure

Any of these Rules of Procedure may be amended by a majority vote of the BZA at the next regular meeting following a regular meeting at which notice of the motion to amend is given.

9. Suspension of Rules of Procedure

These Rules of Procedure may be suspended by the majority vote of the members of the BZA present and voting. The motion to suspend a rule may be made by any member of the BZA. Upon a proper second, the motion may be discussed and voted. The effect of the motion to suspend a rule, if approved, is to make that rule inapplicable to the matter before the BZA; provided, however, approval of a motion to suspend the rule shall not permit the BZA to act in violation of a requirement mandated by the Code of Virginia, the Constitution of Virginia, or any other applicable law including the Albemarle County Zoning Ordinance.

10. Rules of Procedure not Covered by These Rules of Procedure

Any rules of procedure not covered by these Rules of Procedure shall be governed by the current Robert's Rules of Order.

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(Adopted: 1-5-2016)

(Amended: 04-02-2019, 01-03-2023, 02-04-2025)

(Re-adopted: 01-07-2020, 01-05-2021, 03-01-2022, 01-09-2024, 06-03-2025)

(Amended: 01-03-2023)